

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

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In the Matter of )

CERTAIN SET-TOP BOXES AND )  
COMPONENTS THEREOF )


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Investigation No. 337-TA-454

Notice To The Parties

In view of Commission rule 210.42(a)(1)(i), Order No. 55 should have set a target date of October 21, 2002. Revised Order No. 55 which was filed on March 19, 2002, sets a target date of October 21, 2002.

A copy of this notice was sent to each of the private parties on March 19.

  
Paul J. Luckern  
Administrative Law Judge

Issued: March 19, 2002

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

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In the Matter of )

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**CERTAIN SET-TOP BOXES AND** )  
**COMPONENTS THEREOF** )

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**Investigation No. 337-TA-454**

Order No. 55 (revised): Initial Determination Extending Target Date To  
Monday October 21, 2002

Order No. 1, which issued on April 12, 2001, set a fifteen month target date of June 21, 2002. Pursuant to said target date, any final initial determination on violation should be filed no later than March 21, 2002.<sup>1</sup> By this order, the administrative law judge, pursuant to Commission rules 210.42 (a)(1)(i) and 210.51(a) and for good cause, is extending the target date from June 21, 2002 to Monday October 21, 2002, viz., setting a new target date of 19 months. Pursuant to the new target date, the final initial determination on violation will be due no later than the close of business on June 21, 2002.

There is precedent for extending a target date beyond fifteen months for an investigation pending before an administrative law judge. See e.g. "Notice Of Commission Determination Not To Review An Initial Determination Extending The Target For Completion Of The Investigation" dated September 17, 1999 in Inv. No. 337-TA-414, "Notice Of A Decision Not To Review An Initial Determination Extending The Target Date For Completion

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<sup>1</sup> The notice of investigation was published in the Federal Register on March 21, 2001 (66 Fed. Reg. No. 55 at 15887-89).

Of The Investigation" dated October 9, 2001 in Inv. No. 337-TA-452, "Notice Of Commission Determination Not To Review An Initial Determination Extending The Target Date For Completion Of The Investigation" dated January 8, 2002 in Inv. No. 337-TA-457, "Notice Of Commission Determination Not To Review An Initial Determination Extending The Target Date For Completion Of The Investigation" dated December 27, 2001 in Inv. No. 337-TA-455, "Notice Of Decision Not To Review An Initial Determination Extending The Target Date For Completion Of The Investigation" dated November 15, 2001 in Inv. No. 337-TA-462, and "Notice of Commission Decision Not To Review An Initial Determination Extending The Target Date For Completion Of The Investigation" dated December 3, 2001 in Inv. No. 337-TA-455.

The Commission in an opinion, which issued on February 8, 2002, in Certain Organizer Racks And Products Containing Same Inv. No. 337-TA-466 (Organizer Racks) and Certain Sortation Systems, Parts Thereof, And Products Containing Same Inv. No. 337-TA-460 (Sortation Systems) did find circumstances that did not warrant the administrative law judge setting 19.5 month and 20 month target dates in those investigations, taking into account the "legislative intent and Commission policy that section 337 investigations be conducted as expeditiously as possible and that extension of target dates beyond 15 months is the exception, not the rule." (opinion at 2)

The Commission in its February 8 opinion stated, with respect to Organizer Racks, that the administrative law judge gave no reasons for setting a 20 month target date and it did not find that good cause existed for setting an initial target date of 20 months; that it had not been argued to be a complicated case involving complex legal matters; and that the parties to the

investigation were involved in settlement talks and had moved to terminate the investigation. The Commission, with respect to Sortation Systems, found that good cause did not exist at the time to grant an extension of the target date beyond the current 15 month date, which was almost eight months away. It stated that the investigation involved a single patent and only two related respondents, and had not been presented as particularly complicated; and, that at the stage of the proceeding, circumstances did not justify an extension of the target date to 19.5 months.

The administrative law judge finds good cause for extending the target date of this investigation to October 21, 2002. As to this investigation the Commission, in a notice which issued on March 14, 2001, determined that there should be an investigation on whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain set-top boxes by reason of infringement of claims 18-24, 26-28, 31, 32, 33, 36, 42, 43, 48-51, 54, 57-61 and 66 of United States Patent 4,706,121 (the '121 patent), claims 1-5 and 10-14 of United States Patent 5,253,066 (the '066 patent), claims 1, 3, 8, and 10 of United States Patent 5,479,268 (the '268 patent), and claims 14-17, 19, and 31-35 of United States Patent 5,809,204 (the '204 patent) and whether there exists an industry in the United States as required by subsection (a)(2) of section 337. Complainants identified in the Commission notice were Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. As respondents, the following were named in the notice: Pioneer Corporation, Pioneer North America, Inc., Pioneer Digital Technologies, Inc., Pioneer New Media Technologies, Inc., Scientific-Atlanta, Inc., EchoStar Communications Corporation, and SCI Systems, Inc. The

Commission in its notice assigned the investigation to Judge Morriss.

On March 21, 2001, Judge Morriss issued a notice in which she advised the parties that she owns one of the accused products (an EchoStar 4900 set-top box) and that she has an ongoing service contract with DISH Network, which she believed was related to EchoStar. Judge Morriss stated that if any party requested her disqualification as administrative law judge, she would seek to recuse herself from the investigation. On April 10, the Commission issued an order designating the undersigned as the presiding administrative law judge in place of Judge Morriss. On April 10, respondents also filed responses to the complaint and notice of investigation which raised a number of affirmative defenses that included allegations of extensive patent misuse based on complainants' licensing of the patents in issue.

Order No. 1, which issued on April 12, 2001, set a target date for completion of this investigation of June 21, 2002 (a target date of fifteen months) in light of the complaint and notice of investigation, the responses thereto and taking into account the requirements of other investigations as well as the fact that a protective order did not issue until April 12.<sup>2</sup> Extensive discovery was had after issuance of the protective order. On December 3, 2001, the hearing commenced and continued through December 19. The hearing generated some 5870 pages of transcript. Moreover, some 6500 exhibits were received into evidence. The filing of the initial posthearing submissions, including the filing of a plurality of motions (one of which seeks to strike a major portion of the extensive testimony of complainants' sole technical expert),

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<sup>2</sup> No substantive order on the merits of this investigation issued until about one month after the Commission's issuance of the March 14, 2001 notice, and more than one-half month after institution through the March 21 publication in the Federal Register.

comprised some 1600 pages of briefs and some 1800 pages of proposed findings. Said filing was not completed until January 22. Moreover, the filing of the reply posthearing submissions, which included some 1400 pages of briefs, was not completed until January 31. In addition, electronic versions of complainants' reply findings were not received until February 8.

On another investigation on February 11, 2002, pursuant to Commission Orders of July 31, and October 8, 2001 in Certain Lens-Fitted Film Packages, Inv. No. 337-TA-406 (consolidated enforcement and advisory opinion proceeding involving nine U.S. patents and some 18 respondents<sup>3</sup>), this administrative law judge commenced an extensive hearing which consumed the entire week of February 11, including Saturday, February 16. Subsequent to the hearing some 930 pages of initial posthearing submissions were filed. In addition, a plurality of substantive motions have been filed. The Commission, in its July 31 order, has set a due date in the spring of 2002 for the filing of an enforcement initial determination (EIO), an initial advisory opinion (IAO) and recommendations concerning the appropriate enforcement measures to be taken in the event that violations of the Commission's remedial orders are found.

Due to the magnitude and complexity of this investigation and the intervening consolidated enforcement and advisory opinion proceedings, involving the preparation of an EIO, an IAO and recommendations on appropriate enforcement measures by a due date in the

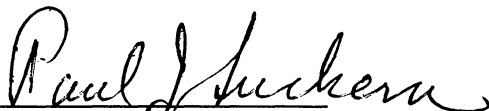
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<sup>3</sup> The investigation was commenced in 1998 and a final initial determination on violation issued in early 1999.

spring of 2002, the administrative law judge finds good cause in extending the target date of this investigation to Monday, October 21, 2002, such that the final initial determination on violation will be due no later than June 21, 2002.

This initial determination is hereby CERTIFIED to the Commission. Pursuant to Commission rule 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this initial determination pursuant to Commission final rule 210.43, or orders on its own motion a review of the initial determination or certain issues therein pursuant to Commission rule 210.44.

A copy of this order was sent to each of the private parties and the staff on March 19, 2002.

  
Paul J. Luckern  
Administrative Law Judge

Issued: March 19, 2002